

OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 252

HARRY J. AMELL, ET AL. PETITIONERS

VS.

UNITED STATES

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF CRIMES

WRITING FOR HABEAS CORPUS FILED JUNE 22, 1935

HABEAS CORPUS GRANTED OCTOBER 22, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 282

HARRY J. AMELL, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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[fol. 1]

IN THE UNITED STATES COURT OF CLAIMS

No. 387-64

- | | |
|---------------------------|-------------------------|
| 1. HARRY J. AMELL, | 36. JOHN J. MARKEY, |
| 2. CHARLES BANISH, | 37. JOHN H. MILLER, |
| 3. EDWARD A. BARNACK, | 38. GAETANO MINUTILLO, |
| 4. NICHOLAS BDERA, | 39. PAUL J. NELSON, |
| 5. FRANK W. BRETT, | 40. J. NESTOR, |
| 6. MARION R. BROGDON, | 41. JASON D. OBERON, |
| 7. LOTON M. BRYANT, | 42. SATURNIN |
| 8. FRANK H. CALHOUN, | ONICHIMONSKI, |
| 9. JOSEPH R. CARMAN, | 43. RICHARD R. PEYNELO, |
| 10. FRED CIPRESSO, | 44. JOHN A. PREGENZER, |
| 11. JEREMIAH P. COLLINS, | 45. RALPH F. RANDALL, |
| 12. JOSEPH P. | 46. B. RASMUSSEN, |
| CONSTANTINEAU, | 47. PHILIP E. REYNOLDS, |
| 13. ROBERT E. CORDER, | 48. JAMES C. ROWE, |
| 14. CARLOS DE JESUS, | 49. DANIEL F. SANTOS, |
| 15. GEORGE A. DELONG, | 50. THEODORE |
| 16. ATHONY DRAGES, | SCHOENBERGER, |
| 17. ANDREW J. DUNNE, | 51. M. SIMONSEN, |
| 18. GEORGE E. DUPONT, | 52. HAAVARD SKILNAND, |
| 19. C. FORSYTH, | 53. C. W. SKOTNICKI, |
| 20. FREDRICK J. FROMM, | 54. JOSEPH B. SMITH, |
| 21. JOSEPH GODLEWSKI, | 55. HAROLD SORENSON, |
| 22. C. GORDON GRANT, JR., | 56. JOHN M. STANLEY, |
| 23. WILLIAM A. GROSS, | 57. RALPH W. STOCKMAN, |
| 24. JACOB M. HAND, | 58. ALEXANDER TALKUN, |
| 25. JOHN HARGRAVE, | 59. CHARLES E. TAYLOR, |
| 26. CHARLES HELLER, | 60. GEORGE TOTH, |
| 27. SOREN G. HENRIKSEN, | 61. THEODORE F. VERHEY, |
| 28. J. A. KIRVEN, | 62. HOMER M. WATERMAN, |
| 29. ANDOR KITTILSEN, | 63. HAROLD W. WHEELER, |
| 30. CALVIN M. JOHNSON, | 64. JEROME W. |
| 31. MAX J. LECHICH, | WINTERFIELD, |
| 32. MELVIN F. LESSE, | 65. JOHN WRIGHT, |
| 33. A. LIBERATO, | 66. MODESTO ZAAR, |
| 34. JAMES R. LOPER, | 67. BRUNO H. ZAHLMANN, |
| 35. DONALD K. MCKEE, | Plaintiffs, |

v.

THE UNITED STATES.

PETITION—Filed November 12, 1964

[fol. 2] *To the Honorable, the United States Court of Claims:*

For a First Cause of Action

1. This Court has jurisdiction under 28 U. S. C. Section 1491.

2. Petitioners are citizens of the United States and at all times hereinafter mentioned were licensed marine engineer officers employed aboard vessels operated and controlled by the Military Sea Transportation Service, Atlantic Area (hereinafter referred to as "MSTS"), a subsidiary agency of the Department of Navy, Defense Department, United States of America.

3. Section 202(S) of the Classification Act of 1949, 5 U. S. C. 1082(S) provides:

"§ 1082, Positions exempt

(S) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry."

4. The prevailing rates and practices in the maritime industry are established by collective bargaining agreements between commercial maritime carriers and maritime labor unions.

5. The prevailing rates and practices for marine engineers are established by collective bargaining agreements between commercial maritime carriers and the National Marine Engineers' Beneficial Association (hereinafter called "NMEBA").

6. Pursuant to such collective bargaining agreements between commercial maritime carriers and NMEBA, wage [fol. 3] reviews were conducted, effective June 15, 1962, June 15, 1963 and June 13, 1964, in which 3½ percent pay increases for marine engineers were made available by the carriers.

7. Pursuant to the terms of said wage review agreements, the members of the Union employed by the commercial carriers decided to put the 3½ percent pay increases effective June, 1962 and June, 1963 into the MEBA Pension and Welfare Fund, and to put the 3½ percent pay increase for June, 1964 into monthly wages.

8. The aforesaid constituted prevailing rates and practices in the maritime industry for maritime engineers.

9. MSTTS has failed and refused to pay to its licensed marine engineers, including the petitioners, the two 3½ percent pay increases received by licensed marine engineers employed on commercial carriers effective June 15, 1962 and June 15, 1963, although such payment was duly demanded on behalf of petitioners.

10. The refusal of MSTTS to grant the aforesaid pay increases is in violation of 5 U. S. C. 1082(8).

For a Second Cause of Action

11. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

12. Petitioners are members of District No. 1 National Marine Engineers' Beneficial Association.

13. The NMEBA is recognized as the exclusive representative of all civilian licensed marine engineers employed by MSTTS, Atlantic Area.

14. Article XII of the Agreement negotiated between the Commander, MSTTS, Atlantic Area and the NMEBA pursuant to Executive Order 10988, and Civilian Marine Personnel Instruction 531.1-2 provide that "prevailing pay [fol. 4] rates and practices in the maritime industry are ascertained by analysis of * * * (2) agreements and contracts between commercial carriers and maritime labor unions."

15. The refusal of MSTTS to grant the pay increases of June 15, 1962 and June 15, 1963 is in violation of the aforesaid agreement and of CMPI 531.

16. Petitioners have exhausted all administrative remedies.

17. Petitioners demand an accounting for computation of the amount of damages to which they are entitled.

18. Upon information and belief, petitioners claim damages totalling \$100,000.

Wherefore, petitioners demand judgment against the United States in the amount of \$100,000 or an accounting and judgment directing payment to petitioners of the two 3½ percent pay increases due June 15, 1962 and June 15, 1963.

Dated: November 3, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004,
Attorney for Petitioners;

David Scribner, Joan Kiok, 50 Broadway, New York,
N. Y. 10004, Of Counsel.

Harry J. Amell, a petitioner, Jakeway Road, Hudson Park, New York.

[fol. 5]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR DISMISS—
Filed December 22, 1964

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of New York or other Districts elected by petitioners or, in the alternative, for an order dismissing the petition. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction

justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * *

[fol. 11] Respectfully submitted.

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

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[fol. 13]

IN THE UNITED STATES COURT OF CLAIMS

No. 387-64

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER OR DISMISS—
Dated February 19, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on December 22, 1964, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds \$10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 19, 1965

Lee Pressman, Attorney for Plaintiffs, Office and
P. O. Address: 50 Broadway, New York, N. Y.
10004.

[fol. 43]

IN THE UNITED STATES COURT OF CLAIMS

No. 387-64

HARRY J. AMELL, *et al.*,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE
TO U. S. D. C. S. D. N. Y.—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al. v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of New York.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 44] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 45]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

1. JAMES J. ALLWEIN,	6. RANDALL D. HARTLEY,
2. RAYMOND H. BELISLE,	7. WILLIAM G. HILL,
3. FRANK H. COLLINS,	8. GEORGE E. HUGHES,
4. THOMAS D. OUTTEN,	9. JAMES J. LEE,
5. JOSEPH E. HART,	10. EARL PAYNE,
11. JUNIOR A. TYLER,	

Petitioners,

v.

THE UNITED STATES.

PETITION—Filed December 23, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. Petitioners are citizens of the United States and at all times hereinafter mentioned, were and are employed by the United States as boat group employees and stationed at the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

2. The Naval Ordnance Laboratory Test Facility is an agency of the Department of the Navy, Defense Department, United States of America.

[fol. 46] 3. This Court has jurisdiction under 28 U. S. C. Section 1491.

4. Petitioners, as a condition of their employment, have been and are required to work, and did work, and continue to work, eight and one-half (8½) hours per day.

5. Petitioners have not been and are not compensated for such work in excess of eight (8) hours per day.

6. Petitioners have been required to work such overtime periods for various periods of time, depending upon the length of time of their individual employments.

7. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices in the maritime industry by a wage board or similar administrative authority.

8. The Federal Employees Pay Act of 1945, 5 U. S. C. 902(c) exempts from coverage (with certain exceptions) " * * * employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority * * * ."

9. One of the stated exceptions to said exemption is 5 U. S. C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U. S. C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

"Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for [fol. 47] each hour of overtime employment of any such employee shall be computed as follows:

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic

rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

10. 5 U. S. C. 673(e) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(e) * * * : Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

11. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Second Cause of Action

12. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

13. Naval Civilian Personnel Instruction 610.2-1k provides:

"Normally, during each 8-hour shift employees will be allowed a specified period of time off to eat lunch. A lunch period is non-work time for which neither basic nor overtime compensation is payable. When a lunch period is set aside, the length of the shift or workday will be extended by the length of the non-work period. [fol. 48] In some types of jobs it may not be administratively desirable to allow a specified period of time off for lunch. For example, it may be desirable to avoid overlapping shifts when night shifts are employed or the job may require the constant attention or availability of the employee without being relieved for lunch. In these types of cases, it is proper to schedule shifts without a lunch period. Under such circumstances, the employees may be permitted to eat

lunch on the job when it is possible to do so without stopping or interrupting his work. When no lunch period is scheduled, the schedule shall so indicate."

14. Petitioners were not allowed a specified period of non-work time to eat lunch and were required to work overtime in excess of eight hours per day for various periods of time depending upon their individual lengths of employment.

15. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Third Cause of Action

16. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of action as if set forth in full herein.

17. The Classification Act of 1949, 5 U. S. C. 1082(8) exempts:

"(8) Officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *."

18. The prevailing rates and practices for employees in the maritime industry may be determined from the collective bargaining agreements between the maritime unions and various shipping companies.

[fol. 49] 19. The prevailing rates and practices in the maritime industry require overtime pay for all work in excess of eight hours per day.

20. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

21. Petitioners have exhausted all administrative remedies.

22. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

23. Upon information and belief petitioners claim damages totalling \$20,000.00.

24. Petitioners will be required to work overtime during the time this action is pending and will be entitled to recover for such overtime until final judgment in this case.

Wherefore petitioners demand judgment against the United States in the amount of \$20,000.00, plus such other and further amount as may be due petitioners on the day of judgment.

Dated: December 18, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004,
Attorney for Petitioners;

David Scribner, Joan Kiok, 50 Broadway, New York,
N. Y. 10004, Of Counsel.

Earl Payne, a petitioner, 1106 N. W. 13th Court, Fort
Lauderdale, Fla.

[fol. 50]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR DISMISS—

Filed January 26, 1965

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of Florida or, alternatively, for a dismissal of the action. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction

justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * *

[fol. 51] Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 52]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER OR DISMISS
—Dated February 23, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on January 26, 1965, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds \$10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 23, 1965

Lee Pressman, Attorney for Plaintiffs, Office and
P. O. Address: 50 Broadway, New York, N. Y.
10004.

[fol. 53]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

JAMES J. ALLWEIN, et al.,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE
TO U. S. D. C., S. D. FLORIDA—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al. v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 54] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

IN THE UNITED STATES COURT OF CLAIMS

No. 269-64

- | | |
|-----------------------|-------------------------|
| 1. JACK E. BENNETT, | 7. EARL C. MCCOY, |
| 2. STANLEY R. BROOKS, | 8. CHARLES R. ROOF, |
| 3. ROY S. COGGESHALL, | 9. JOHN H. ST. GEORGE, |
| 4. JOHN W. ENNIS, | 10. RALPH J. VANDIVER, |
| 5. THOMAS W. GILHAM, | 11. FRANKLIN W. WARREN, |
| 6. HARVEY J. MARTS, | |

on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE UNITED STATES.

PETITION—Filed August 17, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. Petitioners are citizens of the United States and at all times hereinafter mentioned, were and are employed by the United States as boat group employees and stationed at the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

2. The Naval Ordnance Laboratory Test Facility is an agency of the Department of the Navy, Defense Department, United States of America.

[fol. 56] 3. Petitioners bring this action for themselves and on behalf of others similarly situated, the others being likewise employed by the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

4. This Court has jurisdiction under 28 U. S. C. Section 1491(2) and (3).

5. Petitioners, as a condition of their employment, have been and are required to work, and did work, and continue to work, eight and one-half (8½) hours per day.

6. Petitioners have not been and are not compensated for such work in excess of eight (8) hours per day.

7. Petitioners have been required to work such overtime periods for various periods of time, depending upon the length of time of their individual employments.

8. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices in the maritime industry by a wage board or similar administrative authority.

9. The Federal Employees Pay Act of 1945, 5 U. S. C. 902(c) exempts from coverage (with certain exceptions) " . . . employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority"

10. One of the stated exceptions to said exemption is 5 U. S. C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U. S. C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

"Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates [fol. 57] by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

11. 5 U. S. C. 673(c) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(c) * * * : Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

12. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Second Cause of Action

13. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

14. Naval Civilian Personnel Instruction 610.2-1k provides:

"Normally, during each 8-hour shift employees will be allowed a specified period of time off to eat lunch. [fol. 58] A lunch period is non-work time for which neither basic nor overtime compensation is payable. When a lunch period is set aside, the length of the shift or workday will be extended by the length of the non-work period. In some types of jobs it may not

be administratively desirable to allow a specified period of time off for lunch. For example, it may be desirable to avoid overlapping shifts when night shifts are employed or the job may require the constant attention or availability of the employee without being relieved for lunch. In these types of cases, it is proper to schedule shifts without a lunch period. Under such circumstances, the employees may be permitted to eat lunch on the job when it is possible to do so without stopping or interrupting his work. When no lunch period is scheduled, the schedule shall so indicate."

15. Petitioners were not allowed a specified period of non-work time to eat lunch and were required to work overtime in excess of eight hours per day for various periods of time depending upon their individual lengths of employment.

16. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Third Cause of Action

17. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of Action as if set forth in full herein.

18. The Classification Act of 1949, 5 U. S. C. 1082(8) exempts:

"(8) Officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *."

[fol. 59] 19. The prevailing rates and practices for employees in the maritime industry may be determined from the collective bargaining agreement between the maritime unions and various shipping companies.

20. The prevailing rates and practices in the maritime industry require overtime pay for all work in excess of eight hours per day.

21. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

22. Petitioners have exhausted all administrative remedies.

23. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

24. Upon information and belief petitioners claim damages totalling \$60,000.00.

25. Petitioners will be required to work overtime during the time this action is pending and will be entitled to recover for such overtime until final judgment in this case.

Wherefore petitioners demand judgment against the United States in the amount of \$60,000.00, plus such other and further amount as may be due petitioners on the day of judgment.

Dated: August 10, 1964.

Lee Pressman, David Scribner, 50 Broadway, New York 4, New York, Attorneys for Petitioners.

Charles R. Roof, a Petitioner, 236 Southwest 23rd Street, Fort Lauderdale, Florida 33315.

[fol. 60]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO STRIKE PART OF PLAINTIFFS'
PETITION—Filed August 21, 1964
—Allowed September 3, 1964

Defendant moves the Court to strike from plaintiffs' petition the words "and all others similarly situated" which

appears in the caption of plaintiffs' petition. Rule 24 of the Rules of this Court require that every action be prosecuted in the name of the real party in interest. The named persons herein are not the real parties in interest with respect to the rights of all others similarly situated.

Rule 15(a) of this Court requires that a petition include the names of all parties. Plaintiffs' petition fails in this respect in that plaintiffs attempt to bring within the Court's jurisdiction unnamed persons who may never be identified. Such a procedure is not permitted by the Rules of this Court.

This caption in plaintiffs' petition is further objectionable in that this Court cannot grant a money judgment to such unnamed persons. What plaintiffs are attempting to do is to have this Court render a declaratory judgment which would affect these unnamed persons. However, it is well-[fol. 61] settled that this Court cannot grant such relief. *United States Rubber Company v. United States*, 142 C. Cls. 42, 55 (1958).

Accordingly, for the above-stated reasons, defendant requests that its motion be granted, and the words "and all others similarly situated" be stricken from plaintiffs' petition herein.

Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Robert R. Donlan, Attorney, Civil Division, Department of Justice.

[fol. 62]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S ANSWER—Filed October 16, 1964

For its answer to plaintiffs' petition, defendant admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph one.
2. Admits the allegations contained in paragraph two.

3. Defendant does not have sufficient information to form a belief with respect to the truth or the falsity of the allegations contained in paragraph three, and therefore denies same.

4. Paragraph four contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

5. Denies the allegations contained in paragraph five, and alleges that plaintiffs worked Monday through Friday, from 7:30 a.m. to 4:00 p.m., including a non-work period of thirty minutes for lunch.

6. Denies the allegations contained in paragraph six, and alleges that plaintiffs were paid overtime rates for all hours worked in excess of eight hours per day.

7. Denies the allegations contained in paragraph seven.

8. Admits the allegations contained in paragraph eight.

[fol. 63] 9. Paragraph nine contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

10. Paragraph ten contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

11. Paragraph eleven contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

12. Paragraph twelve contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

13. Paragraph thirteen is a procedural allegation not requiring an answer, but to the extent that it may be deemed an allegation of material fact it is denied.

14. Admits the allegations contained in paragraph fourteen.

15. Denies the allegations contained in paragraph fifteen, and alleges that each plaintiff received a thirty-minute lunch period during each workday.

16. Paragraph sixteen contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

17. Paragraph seventeen is a procedural allegation not requiring an answer, but to the extent that it may be deemed an allegation of material fact it is denied.

[fol. 64] 18. Paragraph eighteen contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

19. Denies the allegations contained in paragraph nineteen.

20. Defendant does not have sufficient information to form a belief with respect to the truth or the falsity of the allegations contained in paragraph twenty, and therefore denies same.

21. Paragraph twenty-one contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

22. Paragraph twenty-two contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

23. Paragraph twenty-three is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

24. Paragraph twenty-four is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

25. Paragraph twenty-five is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

26. Defendant denies each and every allegation not specifically admitted, denied or otherwise qualified herein.

[fol. 65]

First Affirmative Defense

27. Each plaintiff has been fully compensated for each hour and each workday upon which his claim is premised. Accordingly, since payment has already been made, there is no basis upon which additional payment can be made.

Second Affirmative Defense

28. Prior to his employment, each plaintiff was advised of the work conditions and the financial arrangements concerning his employment. At no time prior to the filing of this suit, except in the case of plaintiff, Charles Roof, who filed an administrative appeal on June 18, 1963, did any of the plaintiffs herein make any complaints or file any protests regarding their hours of work or methods of compensation. In reliance upon the actions of plaintiffs, defendant did not undertake to change or otherwise alter its working arrangements with the plaintiffs herein. Accordingly, under these circumstances, the plaintiffs are estopped from presenting these claims.

Third Affirmative Defense

29. Each plaintiff's tour of duty and method of compensation was known to him long before the filing of this suit on August 17, 1964. However, at no time prior to the filing of this suit, except in the case of Charles Roof, who filed an administrative appeal on June 18, 1963, did any of the plaintiffs herein take any action to correct or otherwise [fol. 66] alter their tours of duty or methods of compensation. As a result of this unreasonably long delay in bringing the present action, defendant has been injured in that it has been unable to mitigate its damages, if any, or extinguish its liability by changing plaintiffs' tours of duty or methods of compensation. Accordingly, plaintiffs' claims are barred by laches.

Fourth Affirmative Defense

30. Plaintiffs' petition was filed on August 17, 1964. Accordingly, that portion of their claim which is premised upon events which occurred prior to August 17, 1958, is barred by the six-year Statute of Limitations. 28 U.S.C. 2501.

Wherefore, defendant demands judgment dismissing plaintiffs' petition herein.

John W. Douglas, Assistant Attorney General, Civil Division.

Robert R. Donlan, Attorney, Civil Division, Department of Justice.

[fol. 67]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR
DISMISS—Filed January 26, 1965

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of Florida or, alternatively, for a dismissal of the action. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

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[fol. 68]

Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 69]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER
OR DISMISS—Dated February 23, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on January 26, 1965, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds \$10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 23, 1965.

Lee Pressman, Attorney for Plaintiffs, Office and
P. O. Address: 50 Broadway, New York, N. Y.
10004.

[fol. 70]

IN THE UNITED STATES COURT OF CLAIMS

No. 269—64

JACK E. BENNETT, et al.,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING
CASE TO U.S.D.C., S.D. FLORIDA—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61;

Alesiani, et al. v. United States, Ct. Cl. No. 266-63; and
Afnese v. United States, Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 71] Clerk's Certificate to foregoing transcript
 (omitted in printing).

[fol. 72]

IN THE UNITED STATES COURT OF CLAIMS

No. 333-64

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1. CHALMERS O. DETLING, 2. FRANCIS E. JAMES, 3. SEVERT
 N. OLNESS, 4. MICHAEL A. ROCCO and 5. JOHN J. TARPEY,
 Petitioners,

v.

THE UNITED STATES.

PETITION—Filed October 6, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. This Court has jurisdiction under 28 U.S.C., Section 1491.

2. Petitioners are citizens of the United States and at all times hereinafter mentioned were employed on the dredge Essayons.

3. The dredge Essayons is operated by the Corps of Engineers, Department of the Army, Defense Department, United States of America.

4. Petitioners, as a condition of their said employment, have been and are required to work and did work and continue to work certain port watch tours of duty.

[fol. 73] 5. During said port watch tours of duty, petitioners were and are required to work 24 hours per day or 16 hours in excess of 8 hours per day.

6. Petitioners have not been and are not compensated for such overtime work in excess of 8 hours per day.

7. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices by a wage board or similar administrative authority.

8. The Federal Employees Pay Act of 1945, 5 U.S.C. 902(c) exempts from coverage (with certain exceptions) " * * * employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority * * *."

9. One of the stated exceptions to said exemption is 5 U.S.C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U.S.C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

"Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic

[fol. 74] rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

10. 5 U.S.C. 673(c) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(c) * * *: Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

11. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed for each petitioner in accordance with the provisions of 5 U.S.C., Section 913.

For a Second Cause of Action

12. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

13. Army Corps of Engineers Regulations, Corps of Engineers Manual, EM690-7-102, Change 1, Paragraph 7, Subparagraph (4), dated November 17, 1961, provides in pertinent part:

"Port Watch Practices: (4) Port Watch personnel stand one 8-hour or two 4-hour watches per 24-hour period, as a part of their regular 40-hour tour [fol. 75] of duty, and are required to remain aboard the plant on a stand-by basis for the remainder of the port watch.

Method of Payment: 8 hours at regular rates, per 24-hour period, plus overtime for any additional time worked."

14. Under the aforesaid regulation petitioners are entitled to overtime wages for any time worked over and above 8 hours per 24-hour period.

15. The above regulation, as applied to petitioners, is in violation of 5 U.S.C., Section 673(c) and 5 U.S.C., Section 1082(7).

16. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed in accordance with 5 U.S.C., Section 913.

For a Third Cause of Action

17. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of Action as if set forth in full herein.

18. The Classification Act of 1949, 5 U.S.C., Section 1082(7) exempts:

"employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, * * * :
Provided, That the compensation of such employees shall be fixed and adjusted from time to time as [fol. 76] nearly as is consistent with the public interest in accordance with prevailing rates * * *."

19. Upon information and belief the prevailing rates for employees with tours of duty similar to the petitioners require overtime pay for all work in excess of 8 hours per day, or 16 hours at overtime rates per 24 hour port watch tour of duty.

20. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed in accordance with 5 U.S.C., Section 913.

21. Petitioners have exhausted all administrative remedies.

22. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

23. Upon information and belief petitioners claim damages totalling \$3,000.00.

Wherefore petitioners demand judgment against the United States in the amount of \$3,000.00, plus such other [fol. 77] and further amount as may be due petitioners on the day of judgment.

Dated: October 5, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004,
Attorney for Petitioners.

David Scribner, Joan Kiok, 50 Broadway, New York,
N. Y. 10004, Of Counsel.

Chalmers O. Detling, a Petitioner, 34 Classon Ave., Mastic, New York.

[fol. 78]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO DISMISS OR TRANSFER—
Filed December 17, 1964

Defendant moves the Court for an order dismissing the petition or, in the alternative, for an order transferring this action to any United States District Court or Courts elected by petitioners. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for

seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * *

[fol. 79]

Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil
Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Ad-
miralty & Shipping Section, Department of Justice.

[fol. 80]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO DISMISS OR TRANSFER
—Dated February 18, 1965

Plaintiffs object to the granting of defendant's motion to dismiss or transfer, filed on December 21, 1964, on the ground that this Court has jurisdiction of claims for over-time wages by government employees.

The attached Memorandum is submitted in support of this objection.

Dated: February 18, 1965

Lee Pressman, Attorney for Plaintiffs, Office and
P. O. Address: 50 Broadway, New York, N. Y.,
10004.

[fol. 81]

IN THE UNITED STATES COURT OF CLAIMS

 CHALMERS O. DETLING, et al.

—v.—

THE UNITED STATES.

 ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE
TO THE APPROPRIATE U. S. D. C.—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al. v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64.

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the appropriate United States District Court as shall be designated by the plaintiffs to the clerk of this court.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By The Court

Wilson Cowen, Chief Judge

[fol. 82]

 Clerk's Certificate to foregoing transcript omitted
in printing.

[fol. 83]

SUPREME COURT OF THE UNITED STATES

No. 282, October Term, 1965

HARRY J. AMELL, et al., Petitioners,

—v.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 11, 1965

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.